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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
Service Rules for the 746-764 and 776-794 MHz Bands, and Revisions to Part 27 of the Commission's Rules	)	**WT Docket No. 99-168**

REPLY COMMENTS OF AT&T CORP.

Howard J. Symons
Sara F. Seidman
David M. Janas
Mintz, Levin, Cohn, Ferris, Glovsky
and Popeo, P.C
701 Pennsylvania Avenue, N.W.
Suite 900
Washington, D.C. 20004
(202) 434-7300

Douglas I. Brandon
Vice President - External Affairs
1150 Connecticut Avenue, N.W
Washington, D.C. 20036
(202) 223-9222

Of Counsel

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AT&T Corp. ("AT&T"), by its attorneys, hereby submits its reply comments in response to the Notice of Proposed Rulemaking in the above-captioned proceeding.[1]

INTRODUCTION AND SUMMARY

AT&T urges the Commission to promulgate service rules for the 746-764 and 776-794 MHz spectrum that will best promote the development and deployment of innovative wireless services. In particular, the Commission should utilize its "maximum practicable flexibility" standard in determining permissible uses for the spectrum. This means that licenses in these bands should be made available for any terrestrial mobile or fixed service application with the exception of broadcast services. Attempting to accommodate both terrestrial wireless and

[1] Service Rules for the 746-764 and 776-794 MHz Bands, and Revisions to Part 27 of the Commission's Rules, WT Docket No. 99-168, Notice of Proposed Rulemaking, FCC 99-97 (rel. June 3, 1999) ("NPRM").

broadcast services in this spectrum would cause undue interference problems to both services, thereby significantly reducing the usefulness of the licenses.

To further enhance the value of the spectrum, the Commission should license two paired 18 MHz blocks in each Metropolitan Trading Area ("MTA") or Major Economic Area ("MEA"). As a number of commenters note, providing carriers with smaller amounts of spectrum per license would preclude them from putting the spectrum to the uses for which it is best suited.

AT&T also believes that there is no justification for including the licenses for the 746-764 and 776-794 MHz spectrum in the Commission's 45 MHz CMRS spectrum cap. In light of the existing robust competition in the CMRS industry, a spectrum cap of any sort is plainly outdated. In the case of a newly-licensed 746-764 and 776-794 MHz spectrum, such a limitation would needlessly hamper deployment of new services.

Finally, the Commission should take steps to accelerate spectrum utilization, such as permitting and encouraging private agreements between incumbent UHF broadcasters and new licensees to clear the 746-764 and 776-794 MHz spectrum early for new commercial services.

I. THE COMMISSION SHOULD LICENSE THE SPECTRUM FOR ANY TERRESTRIAL MOBILE OR FIXED SERVICE EXCEPT BROADCAST SERVICE

Pursuant to the Balanced Budget Act of 1997 ("1997 Act"),[2] the Commission has reallocated the 746-764 and 776-794 MHz bands for commercial services.[3] In its NPRM, the Commission seeks comment on the technical and service rules governing commercial services in the spectrum, and notes that "the specific service rules will determine whether and to what extent

[2] Balanced Budget Act of 1997, Pub. L. No. 150-33, 111 Stat. 251 (1997).

[3] Reallocation of Television Channels 60-69, the 746-806 MHz Band, 12 FCC Rcd 22953 (1998) ("Reallocation Order").

specific services can or will be licensed."[4] AT&T supports the Commission's goal of "maximum practicable flexibility" in determining the potential authorization of particular services.[5] As discussed below, the Commission can attain this standard by licensing the 746-764 and 776-794 MHz spectrum to terrestrial mobile or fixed service providers and excluding broadcast service providers from the spectrum.

The Communications Act empowers the Commission to allocate spectrum for flexible uses if the allocation would (1) be in the public interest; (2) not deter investment in communications services or development of technology; and (3) not result in harmful interference among users.[6] AT&T agrees with the Commission that making the 746-764 and 776-794 MHz spectrum available for flexible commercial use -- but only to the extent practicable -- would foster the development of technology and the innovation of new services to the benefit of all Americans. Rather than authorize every conceivable use of the spectrum, the Commission should determine whether limitations are needed to achieve the highest and best use.

In this regard, the Commission should carefully evaluate potential interference concerns.[7] As several parties point out,[8] permitting broadcasting services in the 746-764 and 776-794 MHz spectrum is likely to create serious interference problems, which would hinder development of

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[4] NPRM at ¶ 9 n.18.

[5] Id. at ¶ 16.

[6] 47 U.S.C. § 303(y)(2).

[7] See NPRM at ¶ 16.

[8] AirTouch Comments at 11-16; American Mobile Telecommunications Ass'n Comments at 11-12; Association of Public-Safety Communications Officials-International Comments at 3-4; Industrial Telecommunications Ass'n Comments at 5-7; Intek Global Comments at 4-5; MRFAC Comments at 3; Personal Communications Comments at 4; Rural Telecommunications Group Comments at 10-12; Telecommunications Industry Ass'n Comments, Attachment at 2; U S West Comments at 6-9.

new technologies, impede investment in new services and systems, and, in practical terms, render the spectrum virtually worthless to non-broadcast service providers.[9]

By nature, broadcast and wireless technologies operate at significantly disparate power levels. The latter tends to provide uniform radio frequency coverage by splitting the service area into smaller cells, while the former utilizes a centralized high power signal source. The effect of sharing the band would be to increase dramatically the dynamic range requirements imposed upon the wireless equipment. The costs associated with supporting these requirements would ultimately dampen technology investment in this frequency range.

If the 746-764 and 776-794 MHz spectrum is free of these interference problems, the opportunities for the development of new technologies and services would be obvious to prospective service providers and equipment manufacturers. In contrast, if broadcast use of the spectrum creates the prospect that prospective service providers and other services will be subject to harmful interference, the resulting insufficient demand would likely preclude the Commission from realizing the true value of the spectrum at auction and deny the public new and innovative wireless services. Ultimately, permitting broadcasters in the 746-764 and 776-794 MHz spectrum would impede the Commission's goals of "technological innovation and service innovation, the creation of new jobs for the American workforce, the fostering of national economic growth, and the enhancement of opportunities for all Americans to utilize, and realize the benefits of, the national telecommunications infrastructure."[10]

[9] The Commission has recently allocated a large block of spectrum, without charge, to broadcast service providers as part of the transition to digital television ("DTV") technology. Advanced Television Systems and Their Impact Upon Existing Television Broadcast Services, Sixth Report and Order, 12 FCC Rcd 14588, 14627 (1997) ("DTV Sixth Order"). Therefore, excluding broadcast service providers from channels 60-62 and 65-67 is not inequitable.

II. THE COMMISSION SHOULD LICENSE TWO BLOCKS OF PAIRED SPECTRUM ON AN MTA OR MEA-WIDE BASIS

While some commenters advocate chopping the 746-764 and 776-794 MHz spectrum into small pieces, it is not at all clear to AT&T that extremely narrow bands would be appropriate for anything more than the most limited of applications. On the other hand, the Commission is unlikely to recover the full worth of the spectrum for the benefit of the public if, as some parties suggest, only one license per market area is auctioned. Accordingly, AT&T proposes that the Commission establish two 18 MHz (9 MHz paired licenses in each geographic area. As several parties point out, blocks of at least this size are necessary to support spectrum-intensive services such as high-speed data, voice and video transmission, and Third Generation ("3G") wireless services. Development and deployment of these advanced services would further the Commission's public interest goals.[11]

AT&T supports the Commission's tentative conclusion that the 746-764 and 776-794 MHz spectrum should be licensed on a paired basis. As the Commission notes, the "spectrum is

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[10] NPRM at ¶ 12. The Association of Public-Safety Communications Officials-International, Inc. ("APCO") requests that the Commission allocate certain spectrum to private wireless services in order to create "guard bands" in the spectrum immediately adjacent to the 24 MHz allocated to public safety services at 764-776 and 794-806 MHz. APCO claims that such "guard bands" are necessary to prevent interference with public safety systems. APCO Comments at 3. APCO's proposal is an unnecessary limitation on the use of the 746-764 and 776-794 MHz spectrum. Creating guard bands would require smaller spectrum blocks, which as explained herein would devalue the spectrum, degrade service, and delay the development and deployment of new and innovative services. More importantly, in contrast to the potential broadcast/commercial wireless interference problems discussed above, public safety systems will be sufficiently safeguarded under the Commission's interference protection rules. If new licensees in the 746-764 and 776-794 MHz spectrum fail to comply with the interference protection rules, the FCC is well-equipped to enforce the rules.

[11] E.g., AirTouch Comments at 17-18; Rural Telecommunications Group Comments at 8-9; SBC Comments at 2.

optimal for paired, two-way operations."[12] Without paired licenses, the ability of providers to provide two-way operations would be jeopardized, significantly limiting the usefulness of the spectrum.

The service areas covered by licenses should be either Major Economic Areas ("MEAs") or Major Trading Areas ("MTAs"). Service areas of this size would be large enough to create the economies of scale that lead to the development of low-cost equipment. They also would facilitate interference coordination along geographic boundaries and minimize transaction costs and disputes due to interference problems.[13] At the same time, MEAs or MTAs would not be so large that they are beyond the reach of smaller businesses. Creation of license areas on an MEA or MTA basis strikes the appropriate balance between the goals of affordability and the development of innovative services and equipment.

III. LICENSES FOR THE 746-764 AND 776-794 MHz BANDS SHOULD NOT BE INCLUDED IN THE 45 MHz CMRS SPECTRUM CAP

The Commission's spectrum cap rule, 47 C.F.R. § 20.6, which is currently under review,[14] is outdated and no longer appropriate for the current CMRS marketplace. The cap was created to encourage competition and prevent monopolization of wireless services. Competition in the

[12] NPRM at ¶ 19.

[13] See Amendment of the Commission's Rules to Establish New Personal Communications Services, 8 FCC Rcd 7700, 7732 ¶ 74 (1993).

[14] On December 10, 1998, the Commission released a Notice of Proposed Rulemaking in WT Docket No. 98-205, seeking "comment on whether the Commission should repeal, modify or retain the 45 MHz spectrum cap." 1998 Biennial Regulatory Review -- Spectrum Aggregation Limits for Wireless Telecommunications Carriers, 13 FCC Rcd 25132 (1998).

CMRS industry today, however, is robust and growing, as the Commission has recently acknowledged,[15] rendering the spectrum cap unnecessarily burdensome.

In any event, applying the spectrum cap to the 746-764 and 776-794 MHz spectrum would prevent many existing CMRS providers from acquiring licenses in the upcoming auction to the detriment of the public. Precluding the participation of established operators would artificially lower the public's return on the value of the spectrum and would hinder the continued development of competitive wireless services. Absent good reason, consumers should not be denied the benefits of the economies of scale that would result from use of the infrastructure in which cellular, PCS, and SMR providers have already invested billions of dollars. Moreover, many new advanced services, such as high-speed data, voice and video transmission, and 3G services, for which the 746-764 and 776-794 MHz bands are optimal, will require more spectrum than currently permitted under the spectrum cap. AT&T sees no reason to impair the development and deployment of wireless services by application of an arbitrary and completely unnecessary limitation on the acquisition of spectrum.

IV. THE COMMISSION SHOULD TAKE STEPS TO ACCELERATE SPECTRUM UTILIZATION

The auction for the 746-764 and 776-794 MHz spectrum, currently scheduled to begin after January 1, 2001, could occur as early as September 30, 1999 under a bill passed by the Senate on June 8, 1999. Incumbent broadcasters in the spectrum, however, generally are not required to return their analog spectrum to the Commission until December 31, 2006, the end of

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[15] Implementation of Section 6002(b) of the Omnibus Budget Reconciliation Act of 1993, Annual Report and Analysis of Competitive Market Conditions With Respect to Commercial Mobile Services, Fourth Report, FCC 99-136, at ¶¶ 8-9, 18-24 (rel. June 24, 1999) ("the average monthly wireless telephone bill has continued to decline, reflecting increasing penetration in market sectors with lower than average usage").

the DTV transition period,[16] or later if fewer than 85 percent of television households in a market own digital television sets.[17] The Commission should adopt steps to facilitate the introduction of new services in the spectrum, which are consistent with protecting incumbent licensees until the end of the DTV transition phase.

AT&T supports the Commission's determination that new licensees may recover spectrum in the 746-764 and 776-794 MHz bands earlier than the end of the transition period.[18] In particular, AT&T agrees with the Commission's proposal that new licensees on channels 60-62 and 65-67 could negotiate agreements with licensees of protected television stations, including holders of construction permits, to compensate them for converting to DTV technology before the end of the DTV transition period, accepting higher levels of interference than those allowed by the protection standards, or otherwise accommodating new licensees in these bands.[19] The Commission should also make itself readily available to help resolve any disputes that might arise in negotiating agreements

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[16] Advanced Television Systems and Their Impact upon the Existing Television Broadcast Service, MM Docket No. 87-268, Memorandum Opinion and Order on Reconsideration of the Fifth Report and Order, 13 FCC Rcd 6860, 6887 (1998).

[17] Reallocation Order, 12 FCC Rcd at 22953 n.4 (citing Balanced Budget Act of 1997, Pub. L. No. 105-33, 111 Stat. 251 § 3003 (1997)).

[18] See DTV Sixth Order, 12 FCC Rcd at 14626; Advanced Television Systems and Their Impact upon the Existing Television Broadcast Service, MM Docket No. 87-268, Memorandum Opinion and Order on Reconsideration of the Sixth Report and Order, 13 FCC Rcd 7418, 7430 (1998). To aid the possible acceleration of the congressionally-mandated reallocation of the spectrum, the Commission first announced in 1997 that it would consider "whether to require compensation by new service providers to full service or low power operations for the displacement or relocation of such operations from channels 60-69." DTV Sixth Order, 12 FCC Rcd at 14626.

[19] NPRM at ¶ 99 (footnote omitted).

designed to permit early deployment of new services in the spectrum.[20] Adoption of these measures "would benefit the public by accelerating the transition to DTV and clearing the 746-806 MHz band for other services."[21]

CONCLUSION

For the foregoing reasons, the Commission should, first, license the 746-764 and 776-794 MHz spectrum to terrestrial mobile or fixed service providers, and prevent interference problems by excluding broadcast service providers. Second, the Commission should license two 18 MHz blocks of paired spectrum per each MTA or MEA. Third, the 746-764 and 776-794 MHz spectrum should not be counted toward the Commission's 45 MHz CMRS spectrum cap.

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[20] Problems experienced with the relocation of microwave services to clear spectrum for PCS illustrate the potential need for Commission involvement when parties are negotiating agreements to clear the spectrum for new services.

[21] Id. In the Reallocation Order, the Commission stated that only licensees of high power stations and permittees who have filed license applications for such stations by January 2, 2001 will be entitled to interference protection from new licensees during the DTV transition period. Reallocation Order, 12 FCC Rcd at 22964-71 ¶¶ 24, 28-29, 35, 40. The Commission should make clear that to the extent that there is no incumbent operator that falls into either of these categories in a particular market or band, the auction winner in that area will be entitled to use the spectrum immediately. In addition, the Commission should ensure that any construction deadline established for new licensees takes into account the existence of incumbents in certain geographic locations.

Finally, the Commission should permit and encourage private agreements between incumbent UHF broadcasters and new licensees to facilitate the early clearance of the 746-764 and 776-794 MHz spectrum.

Respectfully submitted,

AT& T CORP.

Douglas I. Brandon / by SFS

Douglas I. Brandon
Vice President - External Affairs
1150 Connecticut Avenue, N.W
Washington, D.C. 20036
(202) 223-9222

Howard J. Symons
Sara F. Seidman
David M. Janas
Mintz, Levin, Cohn, Ferris, Glovsky
and Popeo, P.C
701 Pennsylvania Avenue, N.W.
Suite 900
Washington, D.C. 20004
(202) 434-7400.

Of Counsel

August 13, 1999

CERTIFICATE OF SERVICE

I, Elizabeth A. Crowe, a secretary in the law office of Mintz, Levin, Cohn, Ferris, Glovsky and Popeo, P.C., hereby certify that I have, on this 13th day of August, 1999 caused to be hand delivered a copy of the foregoing Reply Comments of AT&T Corp. to the following:

Kathleen O'Brien-Ham, Deputy Chief
Wireless Telecommunications Bureau
Federal Communications Commission
445 12th Street, S.W., Rm. 3-C207
Washington, D.C. 20554

James D. Schlichting, Deputy Chief
Wireless Telecommunications Bureau
Federal Communications Commission
445 12th Street, S.W., Rm. 3-C207
Washington, D.C. 20054

Steve Weingarten, Chief
Commercial Wireless Division
Wireless Telecommunications Bureau
Federal Communications Commission
445 12th Street, S.W., Rm. 4-C207
Washington, D.C. 20554

Jeff Steinberg, Deputy Chief
Commercial Wireless Division
Wireless Telecommunications Bureau
Federal Communications Commission
445 12th Street, S.W., Rm. 4-C207
Washington, D.C. 20554

D'wana R. Terry, Chief
Public Safety & Private Wireless Division
Wireless Telecommunications Bureau
Federal Communications Commission
445 12th Street, S.W., Rm. 4C-321
Washington, D.C. 20554

Ramona Melson, Chief Legal Counsel
Public Safety & Private Wireless Division
Wireless Telecommunications Bureau
Federal Communications Commission
445 12th Street, S.W., Rm. 4C-321
Washington, D.C. 20554

Herb Zeiler, Deputy Chief
Public Safety & Private Wireless Division
Wireless Telecommunications Bureau
Federal Communications Commission
445 12th Street, S.W., Rm. 4C-321
Washington, D.C. 20554

Katherine Hosford, Deputy Chief
Public Safety & Private Wireless Division
Wireless Telecommunications Bureau
Federal Communications Commission
445 12th Street, S.W., Rm. 4C-321
Washington, D.C. 20554

Paul D'Ari, Chief
Policy and Rules Branch
Commercial Wireless Division
Wireless Telecommunications Bureau
Federal Communications Commission
445 12th Street, S.W., Rm. 4A-207
Washington, D.C. 20554

Suzann Friedman, Deputy Chief
Policy and Rules Branch
Commercial Wireless Division
Wireless Telecommunications Bureau
Federal Communications Commission
445 12th Street, S.W., Rm. 4A-207
Washington, D.C. 20554

Cynthia Thomas, Deputy Chief
Policy and Rules Branch
Commercial Wireless Division
Wireless Telecommunications Bureau
Federal Communications Commission
445 12th Street, S.W., Rm. 4A-207
Washington, D.C. 20554

Kris Monteith, Chief
Policy Division
Wireless Telecommunications Bureau
Federal Communications Commission
445 12th Street, S.W., Rm. 3C-120
Washington, D.C. 20554

Nancy Boocker, Deputy Chief
Policy Division
Wireless Telecommunications Bureau
Federal Communications Commission
445 12th Street, S.W., Rm. 3-C120
Washington, D.C. 20554

Stan Wiggins
Policy Division
Wireless Telecommunications Bureau
Federal Communications Commission
445 12th Street, S.W., Rm. 3C-120
Washington, D.C. 20554

Ed Jacobs
Policy Division
Wireless Telecommunications Bureau
Federal Communications Commission
445 12th Street, S.W., Rm. 3C-120
Washington, D.C. 20554

*International Transcription Services, Inc.
1231 20th St., N.W.
Washington, D.C. 20037

Elizabeth A. Crowe

*Via first-class mail, postage prepaid

DCDOCS: 155125.1